

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 359

Introduced by Senator Corbett

February 20, 2013

An act to amend Section ~~21092.2~~ of the ~~Public Resources Code, relating to environmental quality~~; *21159.24 of the Public Resources Code, relating to the environment.*

LEGISLATIVE COUNSEL'S DIGEST

SB 359, as amended, Corbett. ~~California Environmental Quality Act: environmental impact reports~~. *Environment: CEQA exemption: housing projects.*

(1) The California Environmental Quality Act, commonly referred to as CEQA, requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA exempts residential infill projects meeting specified criteria, including, among other things, that a community-level environmental review was adopted or certified within 5 years of the date that the application for the project is deemed complete and the project promotes higher density infill housing. CEQA conclusively presumes that a project with a density of at least 20 units per acre promotes higher density infill

housing. For the purposes of this exemption, CEQA defines “residential” to include a use consisting of residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15% of the total floor area of the project.

This bill would instead exempt as “residential” a use consisting of residential units and neighborhood-serving goods, services, or retail uses that do not exceed 25% of the total building square footage of the project.

(2) Because this bill would require a lead agency to determine whether a housing project meets the above criteria to qualify for an exemption from CEQA, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA requires notices regarding a lead agency determination to require an EIR or other actions pursuant to that act be mailed to every person who files a written request and provides that the failure of a person to receive a requested notice shall not invalidate the action if there has been substantial compliance with these notice provisions.~~

~~This bill would make a technical, nonsubstantive change in these CEQA notice provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21159.24 of the Public Resources Code
- 2 is amended to read:

1 21159.24. (a) Except as provided in subdivision (b), this
2 division does not apply to a project if all of the following criteria
3 are met:

- 4 (1) The project is a residential project on an infill site.
5 (2) The project is located within an urbanized area.
6 (3) The project satisfies the criteria of Section 21159.21.
7 (4) Within five years of the date that the application for the
8 project is deemed complete pursuant to Section 65943 of the
9 Government Code, community-level environmental review was
10 certified or adopted.
11 (5) The site of the project is not more than four acres in total
12 area.
13 (6) The project does not contain more than 100 residential units.
14 (7) Either of the following criteria are met:
15 (A) (i) At least 10 percent of the housing is sold to families of
16 moderate income, or not less than 10 percent of the housing is
17 rented to families of low income, or not less than 5 percent of the
18 housing is rented to families of very low income.
19 (ii) The project developer provides sufficient legal commitments
20 to the appropriate local agency to ensure the continued availability
21 and use of the housing units for very low, low-, and
22 moderate-income households at monthly housing costs determined
23 pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of
24 the Government Code.
25 (B) The project developer has paid or will pay in-lieu fees
26 pursuant to a local ordinance in an amount sufficient to result in
27 the development of an equivalent number of units that would
28 otherwise be required pursuant to subparagraph (A).
29 (8) The project is within one-half mile of a major transit stop.
30 (9) The project does not include any single level building that
31 exceeds 100,000 square feet.
32 (10) The project promotes higher density infill housing. A
33 project with a density of at least 20 units per acre shall be
34 conclusively presumed to promote higher density infill housing.
35 A project with a density of at least 10 units per acre and a density
36 greater than the average density of the residential properties within
37 1,500 feet shall be presumed to promote higher density housing
38 unless the preponderance of the evidence demonstrates otherwise.

(b) Notwithstanding subdivision (a), this division shall apply to a development project that meets the criteria described in subdivision (a), if any of the following occur:

(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.

(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project, that was not known, and could not have been known, at the time that community-level environmental review was certified or adopted.

(c) If a project satisfies the criteria described in subdivision (a), but is not exempt from this division as a result of satisfying the criteria described in subdivision (b), the analysis of the environmental effects of the project in the environmental impact report or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to paragraph (2) or (3) of subdivision (b).

(d) For the purposes of this section, “residential” means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 25 percent of the total floor area building square footage of the project.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

~~SECTION 1. Section 21092.2 of the Public Resources Code is amended to read:~~

~~21092.2. (a) The notices required pursuant to Sections 21080.4, 21083.9, 21092, 21108, 21152, and 21161 shall be mailed to every person who has filed a written request for notices with either the clerk of the governing body or, if there is no governing body, the~~

1 director of the agency. If the agency offers to provide the notices
2 by email, upon filing a written request for notices, a person may
3 request that the notices be provided to him or her by email. The
4 request may also be filed with any other person designated by the
5 governing body or director to receive these requests. The agency
6 may require requests for notices to be annually renewed. The public
7 agency may charge a fee, except to other public agencies, that is
8 reasonably related to the costs of providing this service.

9 (b) ~~If there has been substantial compliance with the~~
10 ~~requirements of this section, subdivision (a) shall not be construed~~
11 ~~in any manner that results in the invalidation of an action because~~
12 ~~of the failure of a person to receive a requested notice.~~

13 (c) ~~The notices required pursuant to Sections 21080.4 and 21161~~
14 ~~shall be provided by the State Clearinghouse to any legislator in~~
15 ~~whose district the project has an environmental impact, if the~~
16 ~~legislator requests the notice and the State Clearinghouse has~~
17 ~~received it.~~